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*Attorney for Third-Party Defendant, Village at Linwood Condominium Association, Inc.*

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Dianne Nehmad,

Plaintiff,

Anthony Milano,

Defendant.

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Anthony Milano,

Defendant/Third-Party Plaintiff

v.

The Village at Linwood Condominium  
Association, Inc.,

Third-Party Defendant.

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SUPERIOR COURT OF NEW JERSEY  
ATLANTIC COUNTY: LAW DIVISION

Docket Number: ATL-L-4013-09

**CIVIL ACTION**

**ANSWER TO THIRD-PARTY  
COMPLAINT AND COUNTERCLAIM  
OF VILLAGE AT LINWOOD  
CONDOMINIUM ASSOCIATION, INC.**

Third-Party Defendant, Village at Linwood Condominium Association, Inc. (hereinafter referred to as "Third-Party Defendant"), by way of Answer to Defendant/Third-Party Plaintiff, Anthony Milano's, Third-Party Complaint says:

**COUNT ONE**

1) Defendant admits the allegations set forth in Paragraph One of Count One of the Third-Party Complaint.

2) Defendant admits the allegations set forth in Paragraph Two of Count One of the Third-Party Complaint.

3) Defendant denies the allegations set forth in Paragraph Three of Count One of the Third-Party Complaint.

4) Defendant denies the allegations set forth in Paragraph Four of Count One of the Third-Party Complaint.

5) Defendant denies the allegations set forth in Paragraph Five of Count One of the Third-Party Complaint.

WHEREFORE, the Third-Party Defendant demands judgment dismissing Defendants/ Third-Party Plaintiff's Third-Party Complaint with Prejudice, the award of costs, attorneys fees, interest thereon and such other relief as the Court deems equitable and just.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiff's Complaint fails to state a claim upon which relief can be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiff's Complaint is barred by the applicable statute of limitations.

##### **THIRD AFFIRMATIVE DEFENSE**

Third-Party Plaintiff's claims are barred by the provisions of New Jersey's Comparative Negligence Law, *N.J.S.A. 2A:15-5.2*.

##### **FOURTH AFFIRMATIVE DEFENSE**

Any injuries or damages allegedly sustained by Third-Party Plaintiff were caused by the sole negligence of a third-party over whom the answering Third-Party Defendant exercised no authority or control.

**FIFTH AFFIRMATIVE DEFENSE**

All actions taken by Third-Party Defendant were in no way negligent.

**SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff is barred from any recovery by reason of his unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff is barred from recovery of any damages by reason of their failure to reasonably mitigate damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff is barred from any recovery by reason of his own negligence.

**NINTH AFFIRMATIVE DEFENSE**

Negligence, if any, on the part of Third-Party Defendant, was not the proximate cause of any damages or injuries which may have been sustained by the Third-Party Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff was aware of the facts, circumstances and conditions existing at the time and place set forth in the Third-Party Complaint and voluntarily assumed all risk present and arising therefrom.

**ELEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff has failed to join in this action all necessary and proper parties as required by *N.J.S.A.* 2A:16-56 and *N.J.S.A.* 2A:16-61, and the above action should therefore be dismissed.

**TWELFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff has failed to join a party or parties without whom the action cannot proceed, as provided by *R.* 4:28-1.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Third-Party Defendant is entitled to any set-offs or deductions from any damages awarded under the doctrine of Collateral Source, both under common law and by statute.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Third-Party Defendant Association is protected by the business judgment rule as all of its acts were authorized and taken in good faith.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Third-Party Defendant Association is protected by the New Jersey Non-Profit Corporation Act, *N.J.S.A. 2A:15-1 et. seq.*

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Third-Party Defendant Association is protected by the Waiver of Subrogation Clause in its Master Deed and/or By-Laws.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff is estopped from asserting allegations against the Third-Party Defendant that the Association should have prevented Third-Party Plaintiff from harming Plaintiff and any other parties as such action was solely within his control.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff's Complaint must be dismissed in accordance with R. 1:4-8 and *N.J.S.A. 2A:15-59.1*

**COUNTERCLAIM**

**FIRST COUNT**

- 1) Third-Party Plaintiff has alleged that Plaintiff, Dianne Nehmad, in a Complaint against

Third-Party Plaintiff has alleged that Defendant/Third-Party Plaintiff, Anthony Milano, viciously attacked and injured the Plaintiff without any justification.

2) Third-Party Plaintiff alleges in his Third-Party Complaint that Third-Party Defendant, Village at Linwood Condominium Association, Inc., negligently failed to take appropriate action to prevent Third-Party Plaintiff from physically attacking Plaintiff and other parties.

3) If the allegations raised by Plaintiff in her main Complaint are true, Third-Party Plaintiff of his own accord committed violent acts against the Plaintiff and other parties and cannot seek to impose liability upon others including the Third-Party Defendant for his intentional actions.

4) Third-Party Plaintiff should therefore be estopped under the Doctrine of Equitable Estoppel and/or the Doctrine of Unclean Hands from alleging that Third-Party Defendant took no actions to prevent the Defendant/Third-Party Plaintiff from acting on his own to harm Plaintiff and alleging the Third-Party Defendant failed to stop Third-Party Plaintiff from his own actions.

5) The actions of the Third-Party Plaintiff are solely his own responsibility and there is no cause of action which permits him to seek relief against the Third-Party Defendant.

**WHEREFORE**, the Third-Party Defendant demands judgment dismissing Third-Party Plaintiff's Complaint with prejudice, counsel fees and costs.

#### **JURY DEMAND**

**PLEASE TAKE NOTICE** that the Third-Party Defendant hereby demands a trial by jury on all issues.

#### **DESIGNATION OF TRIAL COUNSEL**

Third-Party Defendant hereby designates E. Richard Kennedy, Esq. as trial counsel.

**DEMAND FOR PRODUCTION OF STATEMENTS**

DEMAND IS HEREBY MADE that you provide the attorney filing this pleading with true and complete copies of any statements made by the clients of this attorney pursuant to R. 4:10-2(c). This demand is deemed to be continuing.

**DEMAND FOR INTERROGATORIES**

In accordance with R. 4:17-4(c), demand is hereby made that you serve upon the undersigned copies of all interrogatories propounded by you to any party and answered. This demand is deemed to be continuing.

**DEMAND FOR ANSWERS TO FORM C AND C-2 INTERROGATORIES**

Third-Party Defendant hereby demands that Co-Defendants provide answers to uniform interrogatories as set forth in Form C and Form C2 of the Rules Governing the Courts of the State of New Jersey.

**NOTICE TO PRODUCE DOCUMENTS**

Please take notice that, pursuant to R. 4:18-1, request is hereby made of the Plaintiff and/or Co-Defendant(s), by this Third-Party Defendant, that you produce true, complete and accurate copies of the following documents to this office, within thirty (30) days of the date hereof.

- 1) A copy of the insurance declaration sheet in effect at the time of the within matter.
- 2) Copies of any and all photographs which you may have regarding the within matter.
- 3) Copies of any and all expert reports.

4) A copy of the police report and/or municipal court and/or County, State or Federal reports regarding this incident.

5) Copies of any and all witness statements which you may have regarding the within matter.

6) Copies of any and all prior discovery, including pleadings; motions; Orders; answers to interrogatories; deposition transcripts; demand for documents; request for admissions; and response thereto exchanged between parties in this action, with attachments and/or amendments.

7) Copies of any and all contracts regarding the within matter.

#### **DEMAND FOR STATEMENT OF DAMAGES**

Pursuant to R. 4:5-2, the Third-Party Defendant hereby demands that Third-Party Plaintiff serve upon them within five (5) days of the date hereof a written statement of the damages claimed.

**CERTIFICATION PURSUANT TO R. 4:5-1**

Third-Party Defendant, Village at Linwood Condominium Association, Inc., hereby certifies, by and through their counsel, that based upon its knowledge and the information available to them at this time, that this matter in controversy is not the subject of any other action, nor of any party arbitration proceeding in New Jersey.

**CERTIFICATE OF SERVICE**

I hereby certify that this pleading was served within the time period allowed by R. 4:6, as extended, by mailing a copy first class to were served on all counsel of record on this date.

*Kennedy, Wronko, Kennedy*  
*Attorney for Third-Party Defendant, Village*  
*at Linwood Condominium Association, Inc.*



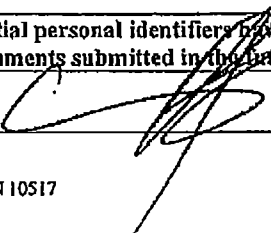
By: \_\_\_\_\_

E. Richard Kennedy, Esq.

Dated: January 21, 2010



## Appendix XII-B1

| CIVIL CASE INFORMATION STATEMENT<br>(CIS)   |   | FOR USE BY CLERK'S OFFICE ONLY  |  |
|---|---|---|--|
|  <p>Use for initial Law Division<br/>Civil Part pleadings (not motions) under Rule 4:5-1<br/>Pleading will be rejected for filing, under Rule 1:5-6(c),<br/>if information above the black bar is not completed or<br/>if attorney's signature is not affixed.</p> |   | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA |  |
|   |   | CHG/CK NO.  |  |
|   |   | AMOUNT:   |  |
|   |   | OVERPAYMENT:  |  |
|   |   | BATCH NUMBER:   |  |
| ATTORNEY/PRO SE NAME<br>E. Richard Kennedy, Esq.  | TELEPHONE NUMBER<br>(973) 334-1355  | COUNTY OF VENUE<br>Atlantic   |  |
| FIRM NAME (If applicable)<br>Kennedy, Wronko, Kennedy   | DOCKET NUMBER (When available)<br>ATL-L-3365-09   |   |  |
| OFFICE ADDRESS<br>150 River Road<br>Building K, Suite 4<br>Montville, New Jersey 07045  | DOCUMENT TYPE<br>Answer & Counterclaim  |   |  |
| JURY DEMAND<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO  |   |   |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Village at Linwood Condominium<br>Association, Inc., Third-Party<br>Defendant  | CAPTION<br>Dianne Nehmad v. Anthony Milano v. Village at Linwood Condominium<br>Association, Inc.   |   |  |
| CASE TYPE NUMBER<br>(See reverse side for listing)<br>602 / 605   | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:63A-27 AND APPLICABLE CASE LAW REGARDING<br>YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |   |  |
| RELATED CASES PENDING?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   | IF YES, LIST DOCKET NUMBERS   |   |  |
| DO YOU ANTICIPATE ADDING<br>ANY PARTIES (arising out of same<br>transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN<br>Community Association Underwriters of America <input type="checkbox"/> NONE<br><input type="checkbox"/> UNKNOWN  |   |  |
| THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.   |   |   |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION   |   |   |  |
| DO PARTIES HAVE A CURRENT,<br>PAST OR RECURRENT<br>RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | IF YES, IS THAT<br>RELATIONSHIP<br><input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS                |   |  |
| DOES THE STATUTE GOVERNING THIS<br>CASE PROVIDE FOR PAYMENT OF FEES<br>BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |   |   |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED<br>DISPOSITION:   |   |   |  |
|   |   |   |  |
|  DO YOU OR YOUR CLIENT NEED ANY<br>DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | IF YES, PLEASE IDENTIFY THE<br>REQUESTED ACCOMMODATION:   |   |  |
| WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, FOR WHAT LANGUAGE:   |   |   |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be<br>redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).  |   |   |  |
| ATTORNEY SIGNATURE:    |   |   |  |

**SIDE 2**

# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I — 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

**Track II — 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE — PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE — PROPERTY DAMAGE
- 699 TORT — OTHER

**Track III — 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 608 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES
- 620 FALSE CLAIMS ACT

**Track IV — Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zelnorm
- 285 Stryker Trident Hip Implants

**Mass Tort (Track IV)**

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 279 GADOLINIUM                         |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 271 ACCUTANE                          | 282 FOSAMAX                            |
| 272 BEXTRA/CELEBREX                   | 283 DIGITEK                            |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 284 NUVARING                           |
| 275 ORTHO EVRA                        | 286 LEVAQUIN                           |
| 277 MAHWAH TOXIC DUMP SITE            | 601 ASBESTOS                           |
| 278 ZOMETAVAREXIA                     | 619 VIOXX                              |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold☐ Putative Class Action☐ Title 59

Paul W. Sonstein, Esquire  
Zucker Steinberg  
Sonstein & Wixted, PA  
415 Federal Street  
Camden, NJ 08103  
(856) 365-0080  
Attorney for Defendant,  
3<sup>rd</sup> party Plaintiff, Anthony Milano

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DIANNE NEHMAD,

Plaintiff(s),

vs.

ANTHONY MILANO,

Defendant.

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: SUPERIOR COURT OF NEW JERSEY

: ATLANTIC COUNTY

: LAW DIVISION

:

: DOCKET NO.: ATL-L-4013-09

:

: CIVIL ACTION

:

:

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ANTHONY MILANO,

Defendant/Third-Party Plaintiff

vs.

THE VILLAGE AT LINWOOD  
CONDOMINIUM

Third-Party Defendant

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:

:

:

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: **DEFENDANT/THIRD-PARTY PLAINTIFF,**

: **ANTHONY MILANO'S ANSWER TO**

: **COUNTERCLAIM**

Defendant, Anthony Milano, presently residing at the Anne Klein Forensic Center,  
Stuyvesant Avenue, West Trenton, New Jersey 08628, by way of Answer to Defendant, Village  
at Linwood Condominium Association's Counterclaim, says:

**FIRST COUNT**

1. Admitted.
2. Admitted.

3. These are legal conclusions; however, Third-Party Plaintiff neither admits nor denies the allegation of this paragraph and leaves third-party defendant to its proofs.
4. These are legal conclusions; however, Third-Party Plaintiff neither admits nor denies the allegation of this paragraph and leaves third-party defendant to its proofs
5. These are legal conclusions; however, Third-Party Plaintiff neither admits nor denies the allegation of this paragraph and leaves third-party defendant to its proofs.

WHEREFORE, the third-party Plaintiff, Defendant on the third-party counterclaim, Anthony Milano, demands judgment dismissing this Count of plaintiff's Complaint, with prejudice; and awarding costs and counsel fees in favor of the answering defendant and against the plaintiff, and for such other relief as the Court deems equitable and just.

**FIRST AFFIRMATIVE DEFENSE**

The answering defendant, third party plaintiff, defendant on the counterclaim, was neither negligent nor acted tortiously in any way whatsoever.

**SECOND AFFIRMATIVE DEFENSE**

The answering defendant, third-party plaintiff, defendant on the counterclaim hereby reserves the right to move to amend its Answer to include any defenses which may become available through discovery.

**FIRST SEPARATE DEFENSE**

At the time of any acts or actions alleged in plaintiff's complaint and third-party defendant's counterclaim, defendant, third-party plaintiff, was suffering from a mental defect or disease which rendered him incapable of performing any intentional act(s) as set forth in plaintiff's complaint.

**SECOND SEPARATE DEFENSE**

At the time of any acts or actions alleged in plaintiff's complaint and third-party defendant's counterclaim, third-party plaintiff was suffering from a mental defect or disease which rendered him incapable of performing any negligent act(s) as set forth in plaintiff's complaint.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Paul W. Sonstein, Esquire, is hereby designated as trial counsel in the within action.

**JURY DEMAND**

Defendant hereby demands a trial by jury as to all issues herein.

**CERTIFICATION**

The undersigned, attorney for answering third-party defendant, hereby certifies that the within Answer was served and filed within the time period set forth in R.4:6-1 and that copies of the within Answer have been served upon all parties as provided for by R.1:5.

Pursuant to R.4:5-1, it is hereby certified that to the best of my knowledge, there are no other pending actions or proceedings involving the matter in controversy, none are contemplated, and I do not presently know the identity of any other parties who should be joined.

ZUCKER STEINBERG  
SONSTEIN & WIXTED, PA

BY: \_\_\_\_\_  
Paul W. Sonstein, Esq.  
Attorneys for Defendant/Third-Party Plaintiff,  
Anthony Milano

DATED: 2/11/10